

JUN 28 1993

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Ms. Mary M. McPhillips  
County Executive  
Orange County Government Center  
255-275 Main Street  
Goshen, New York 10924

Re: **ORDER EPA-CWA-II-92-155**

Dear Ms. McPhillips:

The United States Environmental Protection Agency (EPA) has not yet received Orange County's written verification of control or ownership of the approved mitigation site for the Orange County Landfill. Pursuant to the fourth Ordered Provision on page eight (8) of the above referenced Administrative Order on Consent (the "Order"), Orange County was required to obtain control or ownership of its proposed mitigation site(s) by May 29, 1993, and is therefore in violation of the Order. Further, the County is also in violation of Ordered Provision eight on page 12 of the Order for failing to notify EPA in writing of the delay.

Currently, the County must inform EPA in writing within 7 days of its receipt of this letter of its intentions of either obtaining ownership of the above mentioned mitigation site or an alternative site. The County must also request an extension of the deadlines of the Order. Under Ordered Provision 7(B) on page 12 of the Order, the County shall not commence use of the Landfill Expansion "if at any time, the County fails to complete any obligation identified in this Order or otherwise violates the terms and conditions of this Order, and EPA has not granted Orange County an extension of time pursuant to Ordered Provision 8 below." The County shall not commence with the use of the Landfill Expansion "until Orange County cures the violation(s) to EPA's satisfaction..." If the County fails to comply with this letter, then "EPA reserves all of its rights and remedies, including, but not limited to, the right to require removal of the forty nine (49) acres of fill placed on the parcel" and/or to deny the use of the Landfill Expansion by Orange County under ordered provision six on Page 11 of the Order.

Since the time EPA was informed by Orange Environment in October of 1991 of the loss of the wetlands due to the violation by Orange County, we have tried to expedite a resolution on this matter. An Order on Consent dated July 30, 1993 was signed by both EPA and the County in good faith. While the County agreed to proceed with the task of identifying and implementing an acceptable mitigation plan, EPA's Order did allow the use of the Landfill Expansion after any and all necessary federal and state permits were obtained. EPA believes that off-site mitigation would be more likely to succeed than removing the fill and restoring the original wetlands on-site; however, we reserve the removal option in the event that the County's mitigation project does not proceed.

Of the five mitigation sites proposed, EPA determined that only the first two out of the five proposed mitigation sites would meet the requirements of replacing the lost wetland functions. EPA concurred with the County that the first site, known as "County and State land" near the Landfill Expansion, was the preferred site due to its size and location. The second proposed site, identified as a "black dirt" farm is next to the Landfill across the Wallkill River.

EPA has received and reviewed the detailed plan for the proposed mitigation site near the Landfill Expansion. Our comments on this plan are enclosed. We urge you to expeditiously move forward with this plan. Any further delay in this process will jeopardize the opportunity to have the mitigation completed by the end of the growing season of this year.

Also, we have learned that an impasse may exist between the County Executive and the County Legislature with regard to obtaining approval of the proposed mitigation site. At issue is whether the location of the mitigation site is appropriate. EPA sees no conflict in using the Landfill Expansion while this nearby mitigation site is enhanced. It would be extremely unfortunate if this problem delays progress on the mitigation plan agreed to by the County. Further delays in compensating for the loss of 49 acres of functional wetlands will only prolong this impairment to the wetlands base of the Wallkill River watershed. EPA believes that it is in the interests of all parties involved, and in particular, the environment as a whole, that this matter be resolved as quickly as possible.

We understand that the County is examining potential sites on which to site a new landfill. Since wetlands or other waters of the United States may be present within these sites, EPA offers to assist your staff in reviewing these sites for the existence of wetlands. We will provide a set of EPA's status and trends maps for Orange County to the County Planning Department for this purpose. Note that these maps do not define the limits of federal jurisdiction but are tools which can be used to assess the potential for the presence of wetland areas.

Finally, in the interest of moving forward towards a resolution of this violation, EPA strongly recommends that a meeting among all interested parties be held on this issue in the near future. We will shortly contact you, representatives of interested state & federal agencies, and Orange Environment to arrange this meeting. We encourage you to extend this invitation to any members of the County Legislature that you deem appropriate.

If you have any questions regarding this letter please contact Audrey Moore of my staff at (212) 264-5170.

Sincerely,

Mario Del Vicario, Chief  
Marine and Wetlands Protection Branch

Enclosure

cc: Mr. Robert McEwan, Esq.  
Department of Law

Mr. James E. Broadway, Esq.  
Nixon, Hargrave, Devans & Doyle

Mr. Terry Huffman, Ph.D  
Huffman & Associates, Inc.

Ms. Roberta Murphy, Chairwoman  
Orange County Legislature

Mr. Jefferey Chanin, Esq.  
Orange County Legislature Attorney

Mr. Ralph Manna, Regional Administrator  
NY State Department of Conservation  
Region 3

Mr. Michael Edelstein, President  
Orange Environment, Inc.

bcc: C. Hoffmann, 2ORC  
J. Whitney, 2ORC  
C. Mallery, NYCOE

2WM-MWPB:AUDREY MOORE:6/24/93:F:OCMITING.LET:WETLANDS

## Enclosure

The United States Environmental Protection Agency (EPA) has reviewed the final detailed mitigation plan provided by Orange County. This final detailed plan was submitted to comply with the fifth Ordered Provision outlined in the Administrative Order on Consent (the Order), which orders the County to submit an EPA approved Detailed Mitigation Plan for each approved mitigation site. Based upon our review, we have several comments and questions regarding the plan:

- 1) The total acreage of 98 acres for mitigation and the ratio of created to restored wetland is acceptable.
- 2) What type of erosion control is planned along the roadways that will remain? Although the 4:1 slope is adequate, there is an approximate 10-12 feet difference in elevation between the road and the proposed wetlands.
- 3) On page 7 of the report under IV(A), the third sentence should be changed to read "Any wetland areas inadvertently damaged by these maintenance activities shall be restored ..."
- 4) The spacing of the trees and shrubs in the final plan is different than it is in the draft plan. The draft plan calls for shrubs to be planted on approximately 10 foot centers and trees on 20 foot centers, while in the final plan both are to be planted on approximately tenth-acre centers. The final plan of tenth-acre centers is unacceptable. We recommend that the percentage of created emergent areas be increased to 20%, and that the trees and shrubs be planted according to the draft plan of 10 and 20 foot centers. Also, trees and shrubs should be randomly placed to exhibit a natural setting.
- 5) At a minimum, one other tree species besides the red maple (Acer rubrum) should be planted to provide more diversity. Suggested species from the area include black ash (Fraxinus nigra), pin oak (Quercus palustris), swamp white oak (Quercus bicolor), and willows such as Salix alba or Salix nigra.
- 6) According to "A Field Guide to Trees and Shrubs" by George A. Petrides, the dogwood species Cornus foemina is found in a more southern climate. Its range is from east Virginia, south Indiana, southeast Missouri to Florida and Texas. We question whether this species is appropriate for this area? Also, at a minimum, one other shrub species should be planted to provide more diversity. Suggested species from the area include spicebush (Lindera genzoin), red osier dogwood (Cornus stolonifera), and silky dogwood (Cornus amomum).

7) Ordered Provisions 5B and C require the County to maintain an 85% survival rate after the first growing season and the County is responsible for any replanting and regrading necessary to achieve this survival rate. This survival rate must be maintained for 3 consecutive years for herbaceous plants and 5 consecutive years for woody plants. The mitigation plan currently proposes to use % cover to monitor success. Although one method is not necessarily better than the other, we would like to use the % survival rate for monitoring success in this project. Also, the mitigation plan proposes corrective actions must be taken if conditions are not achieved within three years. This is not acceptable. As stated in the Order, corrective actions must be taken after the first growing season.

8) Yearly reports should be provided to EPA and the US Army Corps of Engineers no later than November 15th. A letter will be sent from Mr. Caspe, Water Management Division Director, changing the annual report due date from September to November.

9) Upon the County's submission of a final annual report which indicates continual compliance in accordance with item 7 above, EPA will notify the County that it has successfully completed the mitigation requirements.

10) It should be stated in the final mitigation plan that these areas shall be held as open space in perpetuity in accordance with the Order under Ordered Provision 5D on page 10.